UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**4:16-CR-429 HEA/PLC**
v.	)	
	)	
DESHAWN DENTON,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO SUPPRESS ALL EVIDENCE OBTAINED PURSUANT TO THE SEARCH OF A CELLULAR TELEPHONE ALLEGEDLY BELONGING TO DEFENDANT

Defendant Deshawn Denton ("Denton"), by and through his counsel, Justin K. Gelfand and his law firm, Capes, Sokol, Goodman & Sarachan, P.C., respectfully moves this Court to suppress all evidence and information obtained pursuant to the unlawful search of a cellular telephone allegedly belonging to Denton.

I. Background

Denton is charged in a pending six-count indictment. Counts 1 and 3 charge carjacking in violation of 18 U.S.C. § 2119; Counts 2, 4, and 6 charge brandishing a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c); Count 5 charges kidnapping in violation of 18 U.S.C. § 1201. Denton has entered a plea of not guilty to all counts.

In its investigation of this case, the Government applied for and obtained a warrant to search a cellular telephone that allegedly belonged to Denton.[1] In support of the application for the search warrant, an affidavit was attached in an attempt to establish the existence of probable cause to search the cellular device. However, the affidavit in support of the search warrant is deficient in that it entirely fails to establish that there existed probable cause to believe that the

[1] Specifically, the warrant was issued to search "one black and grey in color LG brand, model LGMS330, bearing international mobile equipment identifier (IMEI) 355867-07-966082-8."

phone would contain evidence of, contraband related to, or fruits or instrumentalities of, any crime. In fact, the affidavit was completely silent as to why the affiant believed that *this* phone would contain any evidence of any crime and there has never been a suggestion that this phone was contraband and/or the fruit or instrumentality of any crime. As such, and especially in light of recent U.S. Supreme Court authority governing the search of cellular telephones in this day and age, the warrant should not have issued and this Court should suppress all evidence obtained pursuant to the unlawful search of this cellular telephone.

II. Argument

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. More specifically, it provides that "no warrants shall issue, but upon probable cause, supported by oath or affirmation[.]" U.S. Const., amend. IV. Here, the affidavit offered by the Government was legally insufficient at establishing the existence of probable cause and therefore the magistrate judge should not have issued the warrant. More importantly, however, this Court has the duty and the authority to independently review whether the affidavit contained sufficient probable cause.

In determining whether probable cause exists to support a search warrant, the magistrate must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit…there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In this case, the affidavit completely fails to explain why this cell phone was at all likely to contain any evidence relevant in any manner to the crimes with which Denton was suspected to have committed. Indeed, based on the face of the affidavit, it is not at all apparent why a cell phone would be expected to obtain any evidence of carjacking or kidnapping crimes. Thus, the "common-sense decision…given all the circumstances set forth in the affidavit" is that there is no reason to suspect that contraband or evidence of a crime would be located on the phone. *Gates*, 462 U.S. at 238.

The affidavit in this case merely explains that Denton was a suspect in two carjacking offenses allegedly committed on February 7, 2016, and February 9, 2016. It then provides that Denton was arrested on March 16, 2016 and that, at the time of his arrest, this cell phone was in his possession. The affidavit goes on to explain that another suspect allegedly related to this case—"Hampton"— was arrested with two completely unrelated cell phones that allegedly belonged to alleged victims of the car robberies. Then, in conclusory fashion, the affidavit proclaims that the affiant:

> firmly believe[s] there is probable cause to conclude that in the digital media to be searched within the target cellular telephone, there will be located evidence of, contraband related to, and/or the fruits or instrumentalities of one or more violations of Title 18, United States Code, Sections 2, 922(g), 924(c), 1201, and/or 2119.

To justify a search, the circumstances must indicate why evidence of an illegal activity will be found in a "particular place." *Gates*, 462 U.S. at 238. The affidavit must establish that there is "a nexus between the contraband and the place to be searched before a warrant may properly issue[.]" *United States v. Tellez*, 217 F.3d 547, 550 (8th Cir. 2000). The affidavit here explains that the special agent hoped to examine the text messages, call records, and stored files on the cell phone but the affidavit completely fails to explain why any of these possible sources of evidence will likely constitute contraband or evidence of a crime. As such, the warrant should not have issued.

The affidavit in support of the application for the search warrant of this cell phone was simply required to convey to the magistrate, in some manner, that this cell phone was somehow used to commit, or to secrete evidence of, the crimes Denton was alleged to have committed. Absent this explanation, the affidavit amounts to nothing more than a request to search a cell phone simply because it was allegedly in possession of Denton at the time of his arrest. That a defendant possessed a cell phone when arrested is not itself sufficient to establish probable cause to search that cell phone. In holding that valid search warrants must be obtained prior to searching arrestees' phones, the United States Supreme Court recently explained that individuals have *immense* privacy interests in their cell phones:

> Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term "cell phone" is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.

Riley v. California, 134 S. Ct. 2473, 2489 (2014). As such, absent a justifiable reason to suspect that a cell phone actually contains evidence of a crime, a warrant simply should not issue.

A district court in this Circuit recently encountered a defendant's challenge to the sufficiency of an affidavit offered in connection with an application for a warrant to search his cell phone. *United States v. Warren*, No. CR 10-276 PJS JJG, 2010 WL 5330566, at *2 (D. Minn. Dec. 1, 2010). There, the defendant was suspected to be involved in the promotion of prostitution. In concluding that the affidavit did indeed establish probable cause that the defendant's cell phone would contain evidence of the crimes he was suspected to have committed, the court explained,

> Affiant explained in the affidavit submitted in connection with the search warrant application that in his experience cell phones are often used to promote prostitution, and that such cell phones can contain evidence in the form of voice mail, e-mail, text messages and photographs, as well as contact information regarding co-participants in the crime of prostitution. Indeed in the brief one day investigation described in the affidavit submitted in support of the search warrant, Ms. Duncan twice used a cell phone to further the crime of prostitution, at least once telephoning the Defendant, to learn where he was waiting for her.

Id.

The affidavit in this case stands in stark contrast to the affidavit in *Warren*. It is devoid of *any* information that cell phones generally contain evidence of the crimes Denton stands accused of committing, or that this particular phone was used in any manner during the alleged commission of the crimes. As such, the search warrant should not have issued and this Court should suppress all evidence obtained pursuant to the search. Furthermore, to the extent applicable, this Court should also suppress any evidence consistent with the fruit of the poisonous tree doctrine.

III. Conclusion

Based on the foregoing, Denton respectfully requests that this Court grant this motion, suppressing all evidence and information obtained pursuant to the unlawful search of the cellular telephone allegedly belonging to Denton, and for such other and further relief as is just and equitable in this matter

Respectfully Submitted,

Capes, Sokol, Goodman & Sarachan, P.C.

/s/ JUSTIN K. GELFAND

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Certificate of Service

I hereby certify that the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the Office of the United States Attorney and AUSA Sayler Fleming.

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